

## MINUTES

### **ETHICS REVIEW COMMISSION MEETING DECEMBER 15, 2011 5<sup>TH</sup> FLOOR AMERICAS CONFERENCE ROOM - 5:00 P.M.**

#### **MEMBERS PRESENT**

Francisco Ortega, District #1  
Julian Gonzalez-Herrell, District #4  
Rodney Hansen, District #5  
Alexander Neill, District #7  
William H. Rivera, District #8

#### **MEMBERS ABSENT**

Maxey Scherr, Mayoral  
Raymond Rodriguez, District #2  
Paula Villalobos-Jimenez, District #3  
Paul Harrington, District #6

#### **OTHERS PRESENT**

Elaine S. Hengen, Senior Assistant City Attorney  
Sandra Dunsavage, Recording Secretary  
Josie Aranda, Paralegal

#### **I. CALL TO ORDER .**

Seeing a quorum, Chair Neill called the meeting to order at 5:26 p.m.

#### **II. APPROVAL OF MINUTES FOR SEPTEMBER 8, 2011.**

Mr. Ortega moved to approve the minutes of September 8, 2011. Chair Neill seconded motion, all in favor and the motion passed unanimously.

#### **III. DISCUSSION AND ACTION TO ELECT THE VICE-CHAIR. (TABLED FROM SEPTEMBER 8, 2011)**

Nomination made by Mr. Ortega to nominate Rodney Hansen as Vice-Chair. Mr. Hanson declined. Nomination made by Mr. Gonzalez-Herrell to nominate Francisco Ortega as Vice-Chair. Mr. Ortega accepted. No other nominations made. All were in favor of the nomination thereby electing Mr. Ortega as Vice-Chair.

#### **IV. DISCUSSION AND ACTION ON REVISING THE PANEL ASSIGNMENTS.**

Ms. Hengen explained that there are presently 3 Panels. Under the Ordinance the Panels are assigned to potentially do two things. One would be to potentially consider the issuance of advisory opinions if the Commission were requested to do that. Secondly, the Panels have a function under the process for considering and disposing of complaints. The members of the first Panel are Alex Neill, Maxey Scherr, and Raymond Rodriguez. The members of the second

Panel are Paul Harrington, Paula Villalobos-Jimenez, and Julian Gonzalez-Herrell. The members of the third Panel are Francisco Ortega, Rodney Hansen, and William Rivera.

Mr. Gonzalez-Herrell explained to the Commission that he would like to propose that an attorney be assigned to each panel due to a previous incident during a panel hearing leaving an impression that the hearing was unbalanced. Chair Neill made the motion to switch Ms. Maxey Scherr from Panel #1 with Paul Harrington from Panel #2. Mr. Ortega seconded the motion, all in favor and the motion passed unanimously to assign Mr. Paul Harrington to Panel #1 and assign Ms. Maxey Scherr to Panel #2.

## **V. DISCUSSION AND ACTION ON MAKING RECOMMENDATIONS TO THE CITY COUNCIL FOR AMENDMENTS TO THE ETHICS ORDINANCE.**

Mr. Gonzalez-Herrell explained to the commission that he has been looking at the process for Ethics Complaints. Mr. Gonzalez-Herrell stated that he feels that the Ethics Ordinance as it stands does not adequately address the citizen complaints and these complaints don't make it all the way to the Commission as a whole. His concern is that the complaints are not getting beyond the initial determination. Mr. Gonzalez-Herrell suggested the idea of having one session with members of the Ethics Commission, including Ms. Hengen in order to address some of the items that he feels are needed to make the Ethics standards wholesome. Mr. Gonzalez-Herrell's contention is that the Ethics complaint procedures from other cities do have the procedure where the complaints are reviewed by the Commission.

Ms. Hengen explained prior to the recent amendment to the Ethics Ordinance, there was an initial determination phase that was handled by the entire Commission. The Commission looked at ways to bifurcate that process and make those initial determinations for review by the City Attorney's Office and then potentially there could be a panel hearing, and then potentially a hearing by the commission as a whole. Ms. Hengen explained that the amendments to the Ethics Ordinance were modeled based on other major Texas cities. Some of the language seen in the ordinance regarding the duties of the City Attorney's Office was language taken from other major cities. Ms. Hengen explained that she did research concerning that particular issue from the ordinances from each of the five major cities, Dallas, Austin, San Antonio, Houston and Fort Worth. In her research, she found that those cities have reduced the role of the City Attorney in making the initial review, and have placed that task more on the determination of a panel or subcommittee. There has been a shift from the model that we have to more of a shift to what Mr. Gonzalez-Herrell is referring to involving the other 5 major cities.

Chair Neill commented that part of the reason why the amendment was made is because there will always be frivolous complaints. Many of those complaints do not need to be taken to the Commission as a whole. It is difficult enough for everyone to have a quorum to have a meeting and even more so to have a meeting on every single complaint that comes through the door. Chair Neill stated that in his opinion, a weeding process is needed by which the initial complaint goes through prior to it being treated as a full hearing of the Ethics Commission. The real question is who needs to make the initial determination. Should it be the City Attorney's Office or a panel of the Commission? It seems that the Commission is looking at having that task be addressed by a panel of the Commission. If the Commission agrees to place the responsibility of

the initial determination on a panel, then a procedure is needed in order to limit the scope of the initial determination otherwise there will be a full hearing.

Ms. Hengen asked for input from the Commission in regards to what research the Commission would like to have done, or would the Commission like for her to put together information concerning some of the practices from other cities, or would the Commission like to compare ordinances or summaries? How does the Commission want to proceed and what are the areas that the Commission is interested in?

Mr. Ortega expressed concerns in that if the Commission decides in favor of the transition to place this burden of the initial determination under a specific panel, what would the standard of review be? Will there be a standard process in determining whether or not the complaint meets certain pre-requisites? Will there be some type of a checklist and what type of authority would the panel have?

Ms. Hengen offered assistance by offering to review other cities in Texas. The El Paso County's Ethics Commission has a unique model and having the authority being created by statutes and very particularly described as to what they can and cannot do by State Law. We could look into whether there are cities outside the State of Texas that seem to be on the forefront of Ethics and how they go about handling Ethics issues. If there are other cities in other parts of the country that anyone is aware of or research from any city that the Commission would be interested in, Ms. Hengen offered to assist with gathering information.

Mr. Gonzalez-Herrell commented on the provisions in the Charter and stressed his concerns about real ethics performance. Mr. Gonzalez-Herrell would like to bring the standards of this Ethics Ordinance as compared to the Ethics Ordinance from Atlanta, Georgia and San Diego, California. He also stressed his concern about making the Ethics Ordinance available in a format where the average citizen is able to read and understand it.

Ms. Hengen explained that the City Council is looking at establishing a Charter Review Committee in February or March of 2012 for possibly having a Charter Election in maybe November of 2012 or May of 2013. The opportunity will be available for considering issues that should be added into the Charter. Ms. Hengen stated that some issues that have been presented to City Council for consideration of addressing as a provision in the Charter are items such as the filing of frivolous complaints and whether there can be any teeth put into the ordinance.

Ms. Hengen reported to the Commission that she prepared a list of things she is aware of that have come up as issues or questions or concerns. 1. Process for reviewing complaints. 2. Fix confusion that exists regarding the purpose for the provisions in 2.92.010 which is the introductory portion of the ordinance which talks about policy and purpose. 3. Dealing with frivolous complaints. 4. Amendments to provisions in the Ethics Ordinance relating to restrictions on appearances before the City by current and former officers and employees. 5. Filing requirements for financial disclosure. 6. Provisions in Standard of Conduct Section 2.92.050P concerning board members who are lawyers who file lawsuits against the City. 7. The Gift Provision and Department Heads who are concerned about Christmas Gift Baskets because they are not sure that the gift is under \$75.00. 8. What are the core provisions in the

Standards of Conduct, particularly D, E, K, and N and how they can be better clarified? There are provisions in D that relate to financial interest but financial interest has never been defined. 9. The Commission has never been asked for an advisory opinion. 10. Going back to some of the issues that were brought up during the complaint addressed on Maria Teran pertaining to any loop holes in the administrative procurement process that should be addressed in the ordinance.

Further discussion held about formulating some changes that are acceptable to the members of the commission. No action taken on this item.

**VI. DISCUSSION AND ACTION ON COMPILING A HISTORY OF COMPLAINTS MADE UNDER THE ETHICS ORDINANCE AND ESTABLISHING A PROCESS FOR REVIEWING THIS INFORMATION IN CONJUNCTION WITH THE COMMISSION'S RECOMMENDATIONS REGARDING THE ORDINANCE.**

Ms. Hengen explained that Mr. Gonzalez-Herrell contacted the City Attorney's Office and requested documents relating to all of the complaints that have previously gone before the Commission. Ms. Hengen suggested that this matter be brought before the Commission for review and discussion because if this were a Commission project requesting that these documents officially be done then there would be no charge for providing the copies.

Chair Neill made a motion to direct the City Attorney's Office to compile a history of complaints made under the Ethics Ordinance and making them available to members of the commission for official use. Mr. Gonzalez-Herrell seconded the motion, all in favor and the motion passed unanimously.

**VII. DISCUSSION AND ACTION ON RECOMMENDING AMENDMENTS TO THE PROVISIONS IN THE ETHICS ORDINANCE RELATING TO RESTRICTIONS ON APPEARANCES BEFORE THE CITY BY CURRENT AND FORMER OFFICERS AND EMPLOYEES. (TABLED FROM 12/1/2010 AND JUNE 23, 2011 AND SEPTEMBER 8, 2011)**

Item deleted.

**VIII. SCHEDULING OF NEXT MEETING(S).**

Commission members were in agreement to schedule the next meeting on or about the last week of January or the first week of February.

**IX. ADJOURNMENT.**

Chair Neill adjourned the meeting at 6:54 p.m.